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From: Dockstader, Bob
Sent: Monday, March 19, 2001 1:16 PM
To: 'hsr_rules@ftc.gov'
Subject: Comments on Proposed Rules 802.50 and 802.51

I would like to take the opportunity to provide a brief comment on proposed HSR rules 802.50 and 802.51, specifically the \$50 million test in 802.50(a) and 802.51(a)(2).

In both of these sections, the concept is used of sales in or into the United States of over \$50 million in the most recent fiscal year, "combined with such sales to date since the end of that fiscal year." In the comments accompanying the proposed rules, the concern seems to be of an acquisition of foreign asset or an issuer where sales are increasing, so that the "most recent fiscal year" results may understate the current sales situation.

My concern is that using the proposed methodology may capture many transactions where sales may be level or even declining (particularly if the acquisition is taking place towards the end of the current year). For example, assume that US company X is buying a Canadian factory F from Y. Assume that in the most recent fiscal year, sales in or into the US from factory F were \$35 million. Assume further that it is now November of the current year, when the acquisition is planned to close, and that current year sales in or into the US from factory F through November are \$16 million. Even though sales from factory F are markedly declining, the proposed rules would appear to require an HSR filing because the aggregate of most recent year sales plus current year-to-date sales is greater than \$50 million.

One way to consider changing the proposed rules approach could be to use the higher of most recent fiscal year's sales or estimated sales for the current year. Estimates are used in other areas of the rules (for example, determining fair market value for valuation of an acquisition), and perhaps a sales estimate certified by an appropriate official of the selling entity would work for the 802.50 and 802.51 situations.

In any event, I do appreciate the opportunity to offer comments.

Bob Dockstader

This is the email message
I could not get to go through
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Robert A. Dockstader

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